



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 11, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: House Bill No. 1746 SD2

On July 10, 2007, House Bill No. 1746, entitled "A Bill for an Act Relating to Voluntary Employees' Beneficiary Association Trusts" became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The purposes of this bill are to extend the repeal date of Act 245, Session Laws of Hawaii 2005 ("Act 245"), from July 1, 2008 to July 1, 2009; to prohibit the establishment of new voluntary employees' beneficiary association trusts ("VEBA trusts") under Act 245; and to require an employee organization that established a VEBA trust under Act 245 to submit a report to the Legislature after two full plan years of VEBA trust operations.

This bill is objectionable because, if VEBA trusts improve benefits, they likely do so for a select group of employees at the expense of others. As noted in my statement of concerns regarding the original passage of Act 245, VEBA trusts result in increased costs for employee groups that consist of older, less healthy members. This is because VEBA trusts increase adverse selection in two ways. First, bargaining units that have employees with better than average claims or loss experience can form a VEBA trust and exit the Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"). This increases the average claims and loss experience for the remaining EUTF membership and tends to lead to increased rates for that remaining membership. Second, Act 245 provides for VEBA trusts to cover all future retirees but not current retirees. This causes the EUTF to be left with an increasingly older group of existing retirees, resulting in higher rates for the EUTF plans.

The provision of health benefits through a single health benefits delivery system, the EUTF, is the most effective way to control health benefits costs and meet the needs of all State and county employees, retirees, and their dependents. The EUTF was formed, in part, to: (1) eliminate the negative effect on health benefit plan rates due to adverse selection caused by employee organization sponsored health plans; (2) eliminate the duplication of administrative costs caused by having multiple health plans for State and county employees; and (3) establish

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one large health plan that would have the leverage to negotiate better rates and benefits with insurance carriers and others offering health benefits plans.

As also noted in my statement of concerns regarding the original passage of Act 245, I remain concerned about the effectiveness of the safeguards in that Act against fraud or mismanagement by VEBA trustees. VEBA trusts established under Act 245 are not covered by the strict standards of the federal Employee Retirement Income and Security Act of 1974 ("ERISA"). Unlike ERISA, there is no single State agency responsible for administering and regulating VEBA trusts. No State agency has been authorized to make rules for administering and regulating VEBA trusts and no funding has been provided for such administration and regulation.

Despite these objections and concerns, I will permit the pilot program for VEBA trusts to operate through June 30, 2009, rather than June 30, 2008, as originally proposed under Act 245. The State Auditor should conduct the study required under Senate Concurrent Resolution No. 178 and submit a report to the Legislature for consideration at the 2008 legislative regular session. Based on the data in that study and report, the Legislature should make a decision on whether to terminate the VEBA trust established under Act 245 on June 30, 2008 or allow the trust to continue for one additional year. I believe under no circumstances should the VEBA pilot program be extended beyond June 30, 2009.

For the foregoing reasons, I allowed House Bill No. 1746 to become law as Act 294, effective July 10, 2007, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Lingle", written in a cursive style.

LINDA LINGLE